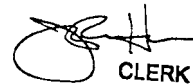


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED

NOV 16 2009


CLERK

DAVID L. HAWKWING,)	CIV. 09-4121-RHB
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
DOUGLAS WEBER, Warden,)	
South Dakota State Penitentiary;)	
D.O.C. CONTRACT)	
PSYCHIATRIC SERVICES; and)	
DR. FREDERICKSON,)	
)	
Defendants.)	

Plaintiff commenced this action pursuant to 42 U.S.C. § 1983 seeking redress for the alleged violations of his constitutional rights. The Court screened the matter as required by 28 U.S.C. § 1915A and concluded that plaintiff failed to state a claim upon which relief could be granted. As a result, the action was dismissed without prejudice on September 3, 2009. Plaintiff then filed a notice of appeal.

On September 30, 2009, the Eighth Circuit Court of Appeals remanded the matter for the limited purpose of determining plaintiff's *in forma pauperis* status. Prior to this limited remand and after plaintiff's filing of the notice of appeal, the Clerk's Office set a letter to plaintiff on September 15, 2009, informing him of his need to pay the \$455 appeal filing fee or an application to proceed *in forma pauperis*. As of the date of this Order, plaintiff has not submitted either the filing fee or the motion. As a result, the

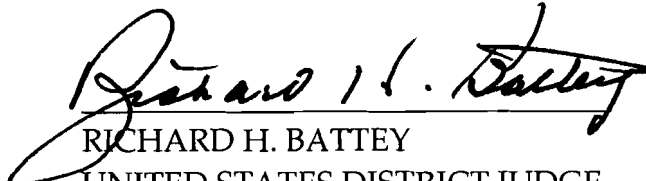
Court cannot say that plaintiff is currently a prisoner or that he is eligible to proceed *in forma pauperis* and therefore, plaintiff must be required to pay the \$455 filing fee in full.

Accordingly, it is hereby

ORDERED that plaintiff may not proceed *in forma pauperis* and shall be required to pay the appeal filing fee of \$455 in its entirety.

Dated this 13th day of November, 2009.

BY THE COURT:


RICHARD H. BATTEY
UNITED STATES DISTRICT JUDGE